

**OCT 18 2005**

**NOT FOR PUBLICATION**  
**UNITED STATES COURT OF APPEALS**  
**FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON, CLERK**  
**U.S. COURT OF APPEALS**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

VINCENT ACOSTA-CONTRERAS,

Defendant - Appellant.

No. 04-10065

D.C. No. CR-02-01950-JMR

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Arizona  
John M. Roll, District Judge, Presiding

Submitted October 11, 2005\*\*

Before: T.G. NELSON, WARDLAW, and TALLMAN, Circuit Judges.

Vincent Acosta-Contreras appeals his 41-month sentence for attempted illegal re-entry into the United States following deportation, in violation of 8 U.S.C. § 1326(a). We have jurisdiction pursuant to 28 U.S.C. § 1291.

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

\*\* This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), counsel for Acosta-Contreras has filed a brief stating there are no grounds for relief, and a motion to withdraw as counsel of record. Acosta-Contreras has filed a pro se supplemental brief and additional citations.

We have considered the pro se supplemental brief and citations, and have conducted an independent review of the record pursuant to *Penson v. Ohio*, 488 U.S. 75, 83 (1988). We affirm the conviction. Because Acosta-Contreras was sentenced under the then-mandatory Sentencing Guidelines, and we cannot reliably determine from the record whether the sentence imposed would have been materially different had the district court known that the Guidelines were advisory, we remand the sentence for further proceedings consistent with *United States v. Ameline*, 409 F.3d 1073, 1084-85 (9th Cir. 2005) (en banc). *See United States v. Moreno-Hernandez*, 419 F.3d 906, 916 (9th Cir. 2005).

Counsel's motion to withdraw as counsel on appeal is denied.

The conviction is **AFFIRMED**, and the sentence is **REMANDED**.